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No. 276

In the Supreme Court of the United States

OCTOBER TERM, 1957

R. S. RAINWATER, SR., SLOAN RAINWATER, JR., WILLIAM RAINWATER, AS INDIVIDUALS AND AS PARTNERS, D/B/A R. S. RAINWATER & SONS, PETITIONERS

v.

UNITED STATES OF AMERICA

AND

CITIZENS NATIONAL BANK, WALNUT RIDGE, ARKANSAS, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES

J. LEE RANKIN,
Solicitor General,
Department of Justice, Washington 25, D. C.

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MEMORANDUM FOR THE UNITED STATES

Petitioners seek review of a decision of the Court of Appeals for the Eighth Circuit sustaining the Government's complaint under the False Claims Act (31 U. S. C. 231) to recover liquidated damages for false claims made in connection with the obtaining of loans from Commodity Credit Corporation. In holding

false claims against a wholly owned Government corporation within the coverage of the False Claims Act, the Eighth Circuit explicitly disagreed with the holding of the Court of Appeals for the Fourth Circuit in *McNinch* v. *United States*, 242 F. 2d 359, which ruled that the Act does not apply to such false claims.

The Government has filed a petition in *McNinch* setting out the reasons why it believes *McNinch* to be wrong and the holding here to be correct. See the petition in No. 146, this Term, at pp. 9–18. Since the importance of the question makes desirable the resolution of the conflict by this Court, we do not oppose the granting of this petition.

Respectfully submitted.

J. LEE RANKIN,
Solicitor General.

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went on to state that during the period involved, R. S. Rainwater, Sr., was president of the Citizens National Bank and Sloan Rainwater, Jr., was its Assistant Cashier (R. 22). It was alleged that the Rainwaters presented the fourteen letters of transmittal, together with the ninety-eight notes secured by the ineligible cotton, to the bank, and that the bank, with full knowledge of the false nature of the transmittal letters and notes, and the ineligibility of the cotton, advanced full payment to the Rainwaters (R. 22). The bank was named as payee on each of the transmittal letters, and both the bank and the Rainwaters submitted these letters and notes to Commodity for payment (R. 23). The conduct of the bank, the complaint concluded, was a fraud upon the United States and a violation of the civil False Claims Act, and damages were sought in the amounts provided for in 31 U. S. C. 231 (R. 23).

3. *The Proceedings Below.*—Defendants in each action moved to dismiss on the grounds that the court lacked jurisdiction over the subject matter and that the complaints failed to state a claim upon which relief could be granted (R. 17, 24). In their memorandum brief in support of the latter motion, it was alleged, *inter alia,* that Commodity was not "the Government of the United States or any department or officer thereof" within the meaning of the civil False Claims Act; and that the actions could not be maintained since the Government suffered no monetary damage as the result of the alleged false claims. Following a consolidated hearing of both actions, the district court granted the motions to dismiss (R. 18,